



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

**BARRIER FREE DESIGN BOARD
BUREAU OF CONSTRUCTION CODES**

Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

AGENDA

September 19, 2008
9:30 a.m.

1. Call to Order and Determination of Quorum

Introduction of new board members.

2. Modifications to Agenda (Pages 1-2)

3. Approval of Minutes – July 18, 2008 (Pages 3-6)

4. Other Business

- Election of 2009 Chairperson of the Barrier Free Design Board

The Chair of the Barrier Free Design Board also serves on the State Construction Code Commission in accordance with MCL125.1503a. The commission meets six (6) times per year and nominees for chair must be willing and able to attend these meetings.

- Letter to Mr. Jack Edington (Page 7-8)
- Approval of 2009 Meeting Schedule (Page 9)

Providing for Michigan's Safety in the Built Environment

BUREAU OF CONSTRUCTION CODES
P O. BOX 30254 • LANSING, MICHIGAN 48909
Telephone (517) 241-9328 • Fax (517) 241-9308
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Barrier Free Design Board Meeting Agenda

Page 2

September 19, 2008

5. Exception Applications

- 01) 78958 Gavigan Residence – Mason (Pages 10-22)
- 02) 79630 Brandywine Elementary School – Berrien (Pages 23-28)
- 03) 79631 Brandywine High Middle School – Berrien (Page 29-35)
- 04) 79933 Get Back Up, Inc. – Wayne (Pages 36-49)
- 05) 80343 Saugatuck High School – Allegan (50-56)

6. Remand - None

7. Staff Report –

8. Public Comment

9. Next Meeting – November 14, 2008

10. Adjournment

“The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact Margarita Torres at (517) 241-9328 at least 10 working days before the event.”



JENNIFER M. GRANHOLM
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STATE OF MICHIGAN
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BARRIER FREE DESIGN BOARD
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES

Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

MINUTES

July 18, 2008

9:30 a.m.

MEMBERS PRESENT

Mr. Donald Link, Vice Chairperson
Mr. Richard Brunvand
Mr. Daryl Domke
Mr. Roger Donaldson
Mr. Joseph Shelton

MEMBERS ABSENT

None

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH PERSONNEL ATTENDING

Ms. Beth Aben, Deputy Director, Bureau of Construction Codes
Mr. Irvin J. Poke, Chief, Plan Review Division
Mr. Todd Cordill, Assistant Chief, Plan Review Division
Ms. Usha Menon, Plan Reviewer, Plan Review Division
Ms. Margarita Torres, BFD Secretary, Plan Review Division

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OTHERS IN ATTENDANCE

Mr. John Kirk
Mr. Matt Dubowski

1. CALL TO ORDER AND DETERMINATION OF QUORUM

The meeting was called to order at 9:31 a.m. by Vice Chairperson Link. A quorum was determined present at that time.

2. MODIFICATIONS TO AGENDA

None

3. APPROVAL OF MINUTES

A **MOTION** was made by Board Member Domke and supported by Board Member Donaldson to correct two items from the May 16, 2008 minutes. **MOTION CARRIED.**

4. TABLED ITEMS

None

5. EXCEPTION APPLICATIONS

- 01) 77258, Zion Evangelical Lutheran Church - Washtenaw
- 02) 77581, Borgess Nursing Homes - Kalamazoo
- 03) 77824, Area Wide OB-GYN-South Pavilion - Kent
- 04) 78065, Spa be True - Macomb

A **MOTION** was made by Board Member Donaldson and supported by Board Member Domke to adopt the reports of the Administrative Law Judge and the recommended decisions for the cases listed above. The board acknowledged the receipt of all materials submitted by the applicants. **MOTION CARRIED.**

05) 78841, Chenery Auditorium - Kalamazoo

A **MOTION** was made by Board Member Domke and supported by Board Member Donaldson to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

06) 79206, Prairie Elementary School - Lenawee

A **MOTION** was made by Board Member Domke and supported by Board Member Brunvand to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

07) 76738, Ryan Elementary School - Branch

A **MOTION** was made by Board Member Donaldson and supported by Board Member Shelton to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

6. **REMANDS**

No remands were received for further board action.

7. **OTHER BUSINESS**

A **MOTION** was made by Board Member Brunvand and supported by Board Member Donaldson to send a letter of recognition to Mr. Jack Edington for his years of service as Chairman of the Barrier Free Design Board. **MOTION CARRIED.**

8. **STAFF REPORT**

Deputy Director Beth Aben reported on the following:

Henry Green has left the bureau and is officially retiring at the end of the year. He has accepted a position in Washington, D.C. with the National Institute of Building Sciences.

Mr. Poke reported on the following:

Mr. Jack Edington, Mr. James Bogie and Dr. Robert Wittick received notifications that the Governor's Appointments Office has replaced them.

Mr. Joseph Shelton and Mr. Richard Brunvand have been re-appointed.

The training for new board members and code changes will be held in September and at that time the new building code books and the ANSI A117.1 Standard will be distributed.

9. PUBLIC COMMENT

Mr. John Kirk from Kingscott and Associates commented on project number 78841, Chenery Auditorium. There is enough space for wheelchair acceptability in the front portion of the auditorium for a handicapped person and a companion. Reservations can be made if there is going to be a larger group.

10. NEXT MEETING

September 19, 2008

11. ADJOURNMENT

Vice Chairperson Link adjourned the meeting at approximately 10:05 a.m.

Approved: _____
Donald Link, Vice Chairperson

Date: _____



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

August 20, 2008

Mr. Jack Edington
8225 W. Huron River Drive
Dexter, MI 48130

Dear Jack:

I write this letter on behalf of the Barrier Free Design Board, that wishes to thank you for your dedication and service. You are a great advocate for assuring accessibility to facilities used by the public. The citizens of Michigan have been well served by your hard work, of which you should be proud.

Your tenure on the Barrier Free Design Board commenced in August 1992 and concluded after 16 years in July of 2008. Of those 16 years you only missed one meeting to attend a college graduation out of state. This speaks volumes for your commitment to the people of the state of Michigan.

Your service as chair of the board began in 1995 and lasted until 2008. As chair you served on the Construction Code Commission with the same admirable record of attendance. You also represented the Barrier Free Design Board on the 1993, 1996, 2000, 2003 and 2006 Michigan Building Code Update Committees, to insure that the construction standards in Michigan maintained the proper attention to the accessibility and utilization of buildings and facilities by persons with disabilities.

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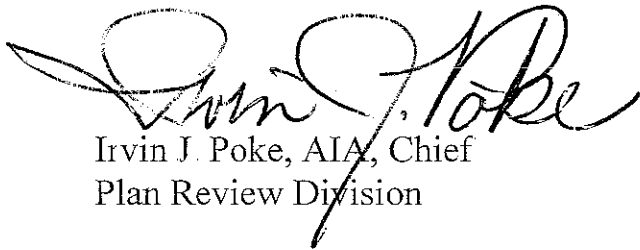
Mr. Jack Edington

Page 2

August 20, 2008

The Barrier Free Design Board and the Bureau of Construction Codes thank you for your devotion and service to assure a safe and accessible built environment. We wish you all the best in your future endeavors and you are held in high esteem by all. It has been an honor to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Irvin J. Poke". The signature is fluid and cursive, with the first name "Irvin" and last name "Poke" clearly distinguishable. The signature is positioned above the printed name and title.

Irvin J. Poke, AIA, Chief
Plan Review Division

IJP/mt

cc: Barrier Free Design Board

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

Schedule of Meetings/Hearings

2009

Bureau/Commission/Office: Bureau of Construction Codes	
Board/Council/Commission: Barrier Free Design Board	
Address: 2501 Woodlake Circle	Telephone: (517) 241-9328
City: Okemos	Michigan Zip Code: 48864
Contact Person: Margarita Torres	Date: August 27, 2008

The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact Denise Davis at (517) 241-9328 at least 10 work days before the event.



The Division of Deafness will provide assistance in locating assistive listening devices or interpreters, with advance notice at (517) 373-1837.



X	Regular Meeting	Special Meeting	Rescheduled Meeting
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DATE	TIME	LOCATION
January 9, 2009	9:30 am	Conference Room No. 3, Okemos Building; Okemos, MI
March 13, 2009	9:30 am	Conference Room No. 3, Okemos Building; Okemos, MI
May 8, 2009	9:30 am	Conference Room 3, Okemos Building; Okemos, MI
July 10, 2009	9:30 am	Conference Room No. 3, Okemos Building; Okemos, MI
September 11, 2009	9:30 am	Conference Room No. 3, Okemos Building; Okemos, MI
November 13, 2009	9:30 am	Conference Room No. 3, Okemos Building; Okemos, MI

The above is provided pursuant to Sections 4 and 5 of Act 267 of Public Acts of 1976,
being Sections 15.264 and 15.265 of the Michigan Compiled Laws.

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of

Gavigan Residence
302 E. Court Street
Ludington, MI

Applicant

Docket No. 2008-989

Agency No. 78958

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

5. EXCEPTION APPLICATIONS
01. 78958

Issued and entered
this 12th day of August, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held August 11, 2008, in Lansing Michigan. Present were Leonard Gavigan, Attorney at Law, and Beverly Gavigan, Applicant's wife, representing the Applicant, and Usha Menon representing the Plan Review Division.

ISSUES

Should an exception be granted the Applicant from Sections 1105.1 and 1109.2 of the 2003 Michigan Building Code (MBC)?

Based on the testimony of Mr. and Mrs. Gavigan, Ms. Menon believed

Section 1104.3 of the MBC was not an issue.

FINDINGS OF FACT

Applicant Exhibit 2 is a photograph of the exterior of the Applicant's home and if the Board approves, the Applicant's office. This photo shows the 5 steps leading to the building entrance. This door is 4 feet above grade; the bottom of the steps is 6 feet from the front side walk. The lot measures 80 by 120 feet. The building was constructed over 100 years ago.

The Applicant requests permission to use a 206 square foot area on the first floor as his law office to give legal advice on probate, wills, and trust issues. He no longer goes to court but hopes to continue with a limited practice for perhaps 3 years. Approximately 2 clients per day come to his current office which will soon close because his partner is retiring. Attorney Gavigan has no employees and handles all appointments himself. He would be willing to meet with any person unable to come to his office at the client's home or other location.

No estimate was provided for adding a ramp or wheel chair lifting device to the front entrance. Once one enters the building, there will be a barrier free compliant hallway to the Attorney's office. A bathroom is available at the rear of the home but at 13 feet by 4 and ½ feet, it is too small to meet the turn around requirements of the code. No estimate was provided to enlarge this facility.

The Applicant will spend \$400 to \$500 to provide a hallway from the front door to the office.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier

Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1105.1 of the MBC provides:

1105.1 Public entrances. In addition to accessible entrances required by Sections 1105.1.1 through 1105.1.6, at least 50 percent of all public entrances shall be accessible. (Exceptions omitted.)

Section 1109.2 of the MBC provides:

1109.2 Toilet and bathing facilities. Toilet rooms and bathing facilities shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing facilities provided within the facility shall not be located on the inaccessible floor. At least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing facility shall be accessible. (Exceptions omitted.)

Compelling need based on the limited use of the office and expected cost to provide building access, and bathroom remodeling has been presented to support the Applicant's exception request. Attorney Gavigan can easily meet with a client at their home or other accessible location. He has a limited number of clients and does his own secretarial work including appointments. The expense involved in providing building

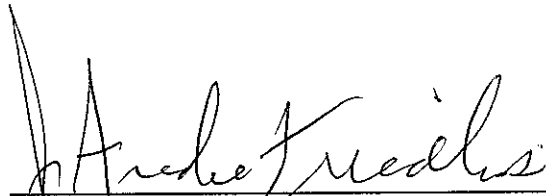
access and a barrier free complaint bathroom is not justified based on the limited use and time for this proposed office.

RECOMMENDED DECISION

I recommend the Board grant the Applicant exceptions from Sections 1105.1 and 1109.2 of the MBC for access from grade level to the building entrance and the first floor bathroom.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

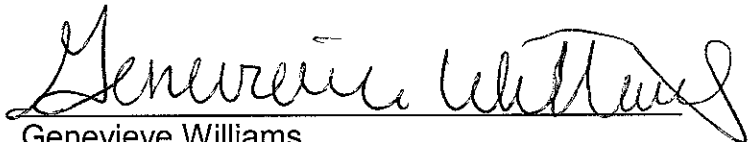
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.



J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 12th day of August, 2008.



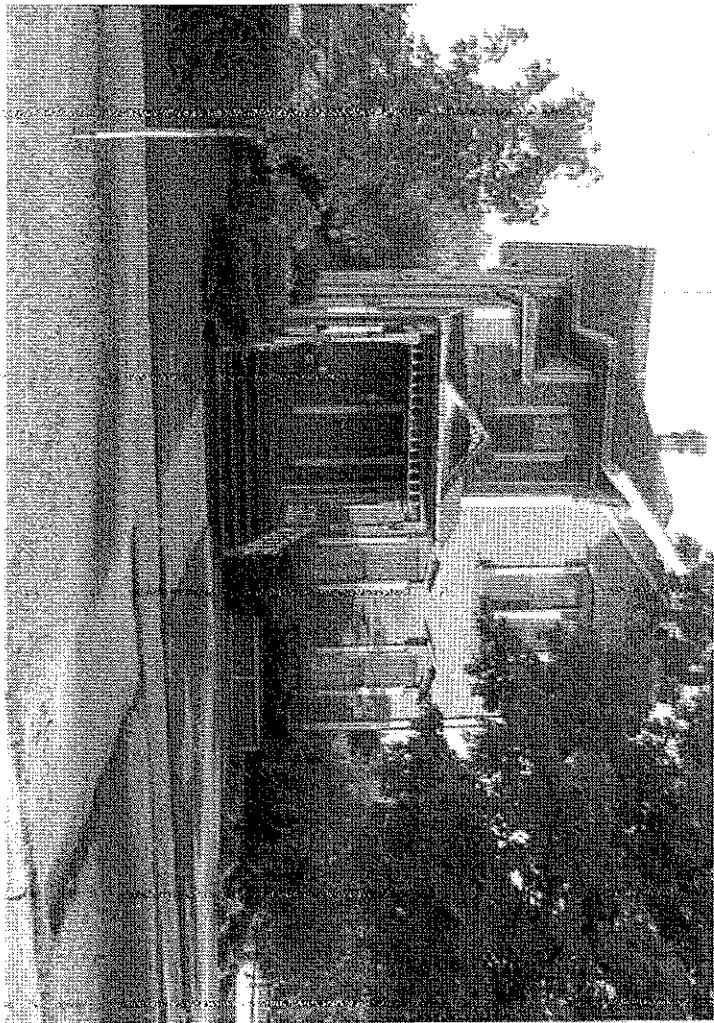
Genevieve Williams

State Office of Administrative Hearings and Rules

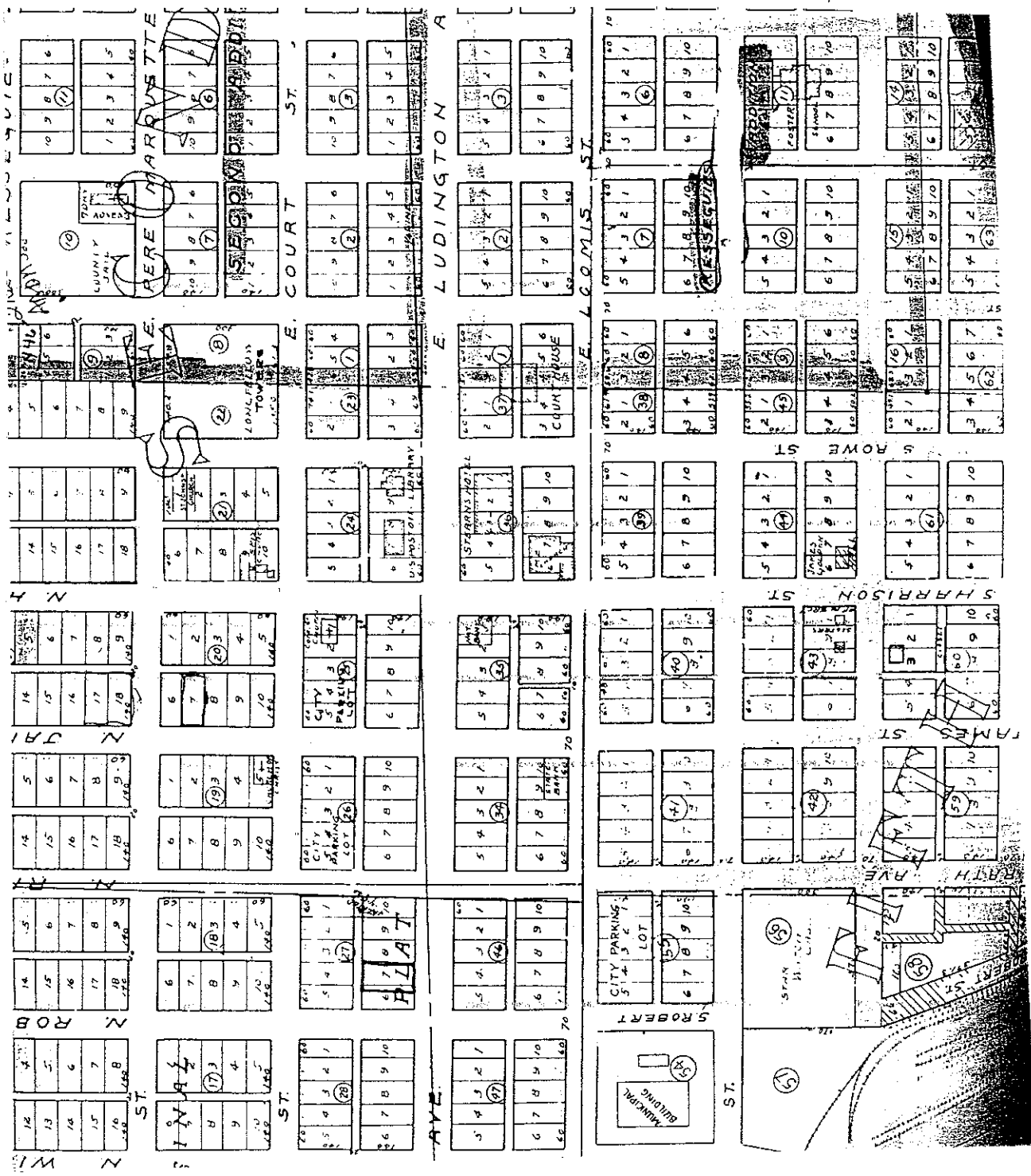
Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

John T Healy
City of Ludington
400 S. Harrison Street
Ludington, MI 49431

Leonard J Gavigan
Gavigan Residence
302 E Court Street
Ludington, MI 49431







Property Address:

302 E COURT ST

LUDINGTON

MI

49431

Gov Unit: CITY OF LUDINGTON

Parcel: 051-225-087-00

School:

53040

LUDINGTON AREA SCHOOLS

Cur Class: 401

PRE: 50.0000 %

Prev Class: 401

Transfer %: 0

Transfer date:

Owner's Name: GAVIGAN BEVERLY J TRUST

2,009 SEV:

96,700

Taxable:

42,422

302 E COURT ST

2,008 SEV:

96,700

Taxable:

42,422

LUDINGTON MI 49431

RECEIVED

JUL 15 2008

BUREAU OF TAXATION
LUDINGTON MI 49431

Created:

Split:

ORIGINAL PLAT LOT 2 & W 24.1 FT OF LOT 1 BLOCK 23.

Most Recent Sale Information

Liber/Page:

Sale on:

for

0

Liber/Page:

Sale on:

for

GAVIGAN, ANDERSON & ANDREWS

Leonard J. Gavigan
Roger H. Anderson
Robert D. Andrews

Attorneys at Law
405 East Ludington Avenue
Ludington, Michigan 49431

Telephone
231-843-2548
FAX
231-843-9290

July 10, 2008

PLAN REVIEW DIVISION
Department of Labor & Economic Growth
Bureau of Construction Codes
P.O. Box 30254
Lnsing, MI 48909

JUL 14 2008

Project No:	78958-Mason
Arch. Project Number No	N/A
Facility Name:	Gavigan Residence
City/Twp/Village	Ludington
Date Received:	4/30/08

RECEIVED
JUL 14 2008

Ladies or Gentlemen:

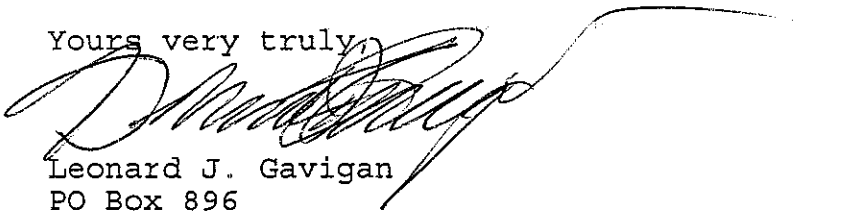
Enclosed is a site layout plan showing the building and the property lines, sidewalks and/or streets adjacent to the property involved.

When you forwarded a letter on June 18, probably because the postal department did not deliver it, I was obviously unaware of the content. We use PO Box 896 for our mail and your letter was addressed to 302 E. Court Street.

Incidentally, I also enclose a small portion of the plat upon which our lot is located. You may notice that Court and Rowe streets, both of which are 70 feet wide, do not indicate the location of any sidewalks - which do exist and we have noted on our site layout plan.

In addition to the above, I was hospitalized both in May and June, for 2-3 days, on each occasion, in Mercy Hosital in Muskegon.

Yours very truly,



Leonard J. Gavigan
PO Box 896
residence - 302 E. Court Street, Ludington.
LJG/m
encls

P.S. The real estate is in my wife's trust - and she is leasing to me whatever portion I require for office use.

78958

GAVIGAN, ANDERSON & ANDREWS

Leonard J. Gavigan
Roger H. Anderson
Robert D. Andrews

Attorneys at Law
405 East Ludington Avenue
Ludington, Michigan 49431

Telephone
231-843-2548
FAX
231-843-9290

April 23, 2008

Michigan Department of Labor & Economic Growth
Bureau of Construction Codes/Plan Review Division
P.O. Box 30255
Lansing, MI 48909

Ladies or Gentlemen:

Enclosed please find an application for a Barrier Free Design Rule Exception - together with a \$300.00 application fee. It applies to a portion of the residence located at 302 E. Court Street, in Ludington (Mason County). I also enclose a drawing (sketch A) which reveals the northerly entry portion of the property involved. I should like to use the office area for the practice of law. I am in my 51st year of law practice. I have no employees, and I do not need and have not had a secretary from some 10 years. The property is located in an area zoned limited commercial and thus no special land use permit is required.

There will be no construction. Upon entering the home from east Court street, there are several steps to ascend to the front porch of the residence. Upon entry, there is an 8 x 8 vestibule and an alteration will be required through a 3 x 4 (which will be altered) closet area directly to a door already in the room that (if my application is approved) I would utilize as an office.

There is also enclosed a sketch B which reveals the floor plan of the entire downstairs area in the home from the vestibule - extending back to the bathroom which is wheelchair accessible. I rarely have ever had handicapped individuals visit my office and, if they wish to consult with me, I will travel to their residence. There is also a room from the point of entry to a living room which can be used as a waiting room. My appointments will be sufficiently far apart so that the waiting room will be used on very few occasions, if any. My partner, Mr. Anderson, owns the building in which I lease and he is about to terminate full-time practice. I will thus no longer have office facilities available in this present location.

If you require any additional information, please advise.

Yours very truly,

Leonard J. Gavigan
302 E. Court St., PO Box 896
Ludington, MI 49431-0896
LJG encls

COURT ST SIDEWALK

N ↑

RECEIVED

APR 30 2008
BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

STEPS

Porch

12 X 7

Vestibule

8 X 8

Hall

3 X 4

Office

12 X 18

**PLAN REVIEW
COPY**

78 958

Shelf No. file

SKETCH A

RECEIVED

APR 30 2008

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review
P.O. Box 30255, Lansing, MI 48906
517-241-9328
www.michigan.gov/bcc

133

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

78 958

Application Fee: \$300.00

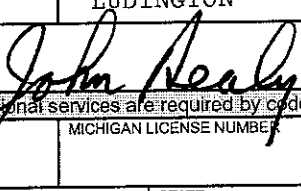
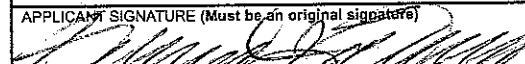
Authority: 1966 PA 1
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Tran Info: 133 13959070-1 04/28/08
CHK#: 8462 Amt: \$300.00
ID: LEONARD GAVIGAN

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION			
FACILITY NAME Leonard J. & Beverly J. Gavigan residence		STREET / SITE ADDRESS 302 E. Court St.	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: Ludington		COUNTY Mason	
Estimated Project Cost \$ 500.00		Estimated Cost of Compliance \$	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use		Building Permit / File Number	
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP
CONSTRUCTION TYPE			
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) 1104.1 1104.3 Reason for Non-Compliance THERE WOULD BE NO ACCESSIBLE BUILDING ENTRANCE. NO INTERIOR ACCESSIBLE ROUTE.			
NAME JOHN T. HEALY		ENFORCING AGENCY CITY OF LUDINGTON	
ADDRESS 400 S. HARRISON ST.		CITY LUDINGTON	TELEPHONE NUMBER (Include Area Code) 231-843-2956
BUILDING OFFICIAL SIGNATURE (Must be an original signature) 		ZIP CODE 49431	FAX NUMBER (Include Area Code) 231-845-1146
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME		MICHIGAN LICENSE NUMBER	FIRM NAME
ADDRESS	CITY	STATE	TELEPHONE NUMBER (Include Area Code)
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE Leonard J. Gavigan		COMPANY NAME	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
ADDRESS 302 E. Court St.	CITY Ludington	STATE MI	ZIP CODE 49431
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.		NUMBER (Include Area Code) (231) 843-2841 res (231) 843-2548 ofc FAX NUMBER (Include Area Code) (231) 843-9290	
APPLICANT SIGNATURE (Must be an original signature) 		DATE April 9, 2008	

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2008-722

Brandywine Elementary School
2428 S. 13th Street
Niles, MI,
Applicant

Agency No. 79630

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

5. EXCEPTION APPLICATIONS
02. 79630

RECEIVED

JUL 11 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Issued and entered
this 10th day of July, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on July 1, 2008, at the State Office of Administrative Hearings and Rules, Ottawa Building, 2nd Floor, 611 West Ottawa, Lansing, Michigan. Present were Matt Douhan, Project Architect and Richard Hebard, Principle Architect representing the Applicant. James Greene represented the Plan Review Division.

ISSUE

Should an exception be granted from Section 604.3 of the 1998 ICC/ANSI A 117.1 Code?

FINDINGS OF FACT

The Applicant will actually comply with Section 604.3 based on Exception 4 to Section 1109.2 of the 2003 Michigan Building Code. During the prehearing conference with Mr. Greene it became obvious that compliance will be achieved.

The Applicant is adding a toilet room to serve an addition consisting of a music room and an art class room connected via a corridor to the main building. This toilet room is in excess of the toilet facility number required by the plumbing code. This bathroom will not be designated for staff use only. Accordingly, staff and students may use this bathroom.

CONCLUSIONS OF LAW

Section 1109.2 and Exception 4 provide:

1109.2 Toilet and bathing facilities. Toilet rooms and bathing facilities shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing facilities provided within the facility shall not be located on the inaccessible floor. At least 1 of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing facility shall be accessible.

Exception 4:

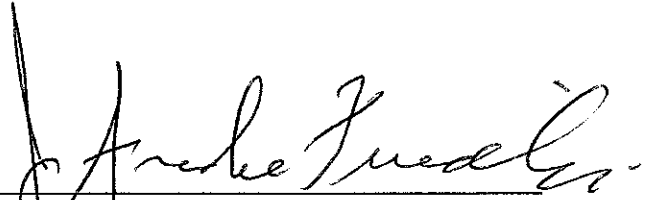
Toilet room fixtures that are in excess of those required by the plumbing code and that are designated for use by children in day care and primary school occupancies.

The parties agreed that the exception applied to the bathroom at issue. Accordingly, no exception is needed.

RECOMMENDED DECISION

I recommend the Board acknowledge the Applicant's compliance with Section 604.3 of the 1998 ICC/ANSI A 117.1 and 1109.2 of the Michigan Building Code and dismiss the Applicant's exception request.

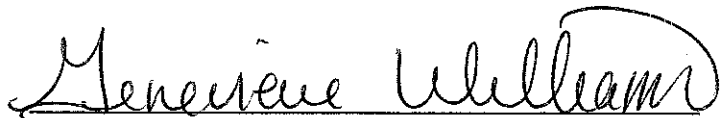
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.



J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 10th day of July, 2008.



Genevieve Williams

State Office of Administrative Hearings and Rules

Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Richard D. Hebard
Hebard & Hebard Architects, Inc.
107 N. Eddy Street
South Bend, IN 46617

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

RECEIVED



MAY 15 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

EXHIBIT 'A'
EXPLANATION FOR REQUEST –
APPLICATION FOR BARRIER FREE DESIGN RULE EXCEPTION

BRANDYWINE ELEMENTARY SCHOOL
STATE OF MICHIGAN PROJ. NO.: 74748 - BERRIEN

The Non-Compliant fixture is a staff toilet provided to supplement three existing unisex single-user staff toilets that meet the accessibility provisions of the 2003 Michigan Building Code.

The toilet is Non-Compliant because a sink is located within the water closet clearance as required by Section 604.3.1 and Fig. 604.3.1.

We request an exception be granted for the following reasons:

1. A unisex single-user toilet meeting the requirements of Section 604.3 is located less than 90 feet from the non-compliant toilet
2. Our interpretation of the Michigan Building Code Section 1109.2 was that this single-user toilet room was a part of a cluster of toilets containing fixtures in excess of the minimum required number of plumbing fixtures and met the requirements of Exception No. 4
3. A complete design review was performed by the Michigan Bureau of Construction Codes and a permit issued based upon the drawings we submitted. The toilet room was built per the State approved plans.
4. The toilet was not requested by the Owner or required code. The toilet was provided for the convenience of the Music and Art teachers.
5. Masonry walls that were specified for this room have already been constructed and all plumbing has been roughed in.

RECEIVED

MAY 15 2008

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Div
P.O. Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

133

79 630

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application Fee: \$300.00

Authority: 1966 PA 1
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION				
FACILITY NAME Brandywine Elementary School		STREET / SITE ADDRESS 2428 S. 13th Street		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Township Of: Niles		COUNTY Berrien		
Estimated Project Cost \$ 3,000,000.00		Estimated Cost of Compliance \$ 6,000.00		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number B026199		
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP E	CONSTRUCTION TYPE II-B
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) 1998 ICC / ANSI A117.1 Section 604.3 - "Clearance (around water closet)". Reason for Non-Compliance See Exhibits A, B, and C attached.				
NAME TODD CORDILL, NCARB		ENFORCING AGENCY STATE OF MICHIGAN BUREAU OF CONSTRUCTION CODES		TELEPHONE NUMBER (Include Area Code) (517) 241-9328
ADDRESS P.O. Box 30255		CITY LANSING	ZIP CODE 48912	FAX NUMBER (Include Area Code) (517) 241-9308
BUILDING OFFICIAL SIGNATURE (Must be an original signature) 				
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
NAME Richard D. Hebard, R.A.		MICHIGAN LICENSE NUMBER 34983		FIRM NAME Hebard & Hebard Architects, Inc.
ADDRESS 107 North Eddy St.		CITY South Bend	STATE IN	TELEPHONE NUMBER (Include Area Code) (574) 234-8907
APPLICANT (Note: All correspondence will be sent to this address)				
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE Richard D. Hebard, R.A.		COMPANY NAME Hebard & Hebard Architects, Inc.		SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
ADDRESS 107 North Eddy St.		CITY South Bend	STATE IN	TELEPHONE NUMBER (Include Area Code) (574) 234-8907
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.				FAX NUMBER (Include Area Code) (574) 234-8908
APPLICANT SIGNATURE (Must be an original signature) 			DATE 05-14-08	

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2008-724

Brandywine High Middle School
1700 Bell Road
Niles, MI,
Applicant

Agency No. 79631

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

5. EXCEPTION APPLICATIONS
03. 79631

RECEIVED

JUL 11 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Issued and entered
this 10th day of July, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24 101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on July 1, 2008, at the State Office of Administrative Hearings and Rules, Ottawa Building, 2nd Floor, 611 West Ottawa, Lansing, Michigan. Present were Matt Douhan, Project Architect and Richard Hebard, Principle Architect representing the Applicant. James Greene represented the Plan Review Division.

ISSUE

Should an exception be granted from Section 1109.2 of the 2003 Michigan Building Code?

FINDINGS OF FACT

The Applicant obtained a building permit in October or November 2007 to renovate an existing choir room and girls' locker rooms. As part of this work, a bathroom was constructed in the coaches' office. This entire project is expected to cost 2 and ½ million dollars. The coaches' office and bathroom will cost approximately \$30,000.

Although the plans were approved as submitted, during an interim inspection, the inspector observed that the lavatory and water closet overlap the required 60 inch clearance measurement. Unfortunately, the block walls are already in place. In addition, the plumbing has already been installed in the south wall to feed the fixtures on the east wall.

The only way to pick up the necessary space would be to expand the east wall 3 and ½ feet east. This would cost approximately \$12,000 and include moving the wall and relocating the plumbing lines already in place in the south wall. Moving the wall would reduce the coaches' office from 150 square feet to 120 square feet. Three lockers would be lost leaving only two. This office is used by up to 5 coaches and at most two coaches at any one time. These are female coaches to work with girls' teams. Approximately 25 feet away from this bathroom is a completely barrier free bathroom in the girls' locker room.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free

design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1109.2 provides:

1109.2 Toilet and bathing facilities. Toilet rooms and bathing facilities shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing facilities provided within the facility shall not be located on the inaccessible floor. At least 1 of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing facility shall be accessible.
(Exceptions omitted.)

Compelling need has been presented. The Applicant relied on the approval of the submitted plans which placed the lavatory and water closet in the positions now discovered to be in violation. Moreover, costs associated with moving an existing wall and plumbing lines will be substantial at \$12,000 for a school system. There will also be limited use of this bathroom by up to 5 female coaches. At most two will be in the office at

any one time. Any of these coaches can also use a fully compliant bathroom 25 feet away in the girls' locker room.

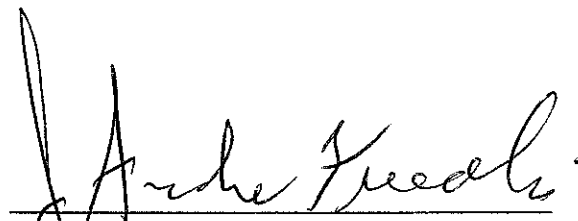
Discovery of this issue came soon enough in construction to allow other bathrooms to be constructed with proper clearances.

RECOMMENDED DECISION

I recommend the Board grant the Applicant's request for exception from Section 1109.2 of the 2003 Michigan Building Code.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 10th day of July, 2008.



Genevieve Williams

State Office of Administrative Hearings and Rules

Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Richard D. Hebard
Hebard & Hebard Architects, Inc.
107 N Eddy Street
South Bend, IN 46617

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

RECEIVED



MAY 15 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

EXHIBIT 'A'
EXPLANATION FOR REQUEST –
APPLICATION FOR BARRIER FREE DESIGN RULE EXCEPTION

BRANDYWINE JR/SR HIGH SCHOOL
STATE OF MICHIGAN PROJ. NO.: 74749 – BERRIEN

The toilet that has been issued a "Notice of Code Violation" is a private toilet provided for the members of the High School Girl's coaching and P.E. staff. It is only accessible through a staff office located within the Girl's locker room.

The toilet is Non-Compliant because a sink is located within the water closet clearance as required by Section 604.3.1 and Fig. 604.3.1.

We request an exception be granted for the following reasons:

1. The locker room has been designed with a fully accessible toilet stall meeting Section 604.
2. Our interpretation of the Michigan Building Code Section 1109.2 was that this single-user toilet room was a part of a cluster of toilets containing fixtures in excess of the minimum required number of plumbing fixtures and met the requirements of Exception No. 4.
3. A complete design review was performed by the Michigan Bureau of Construction Codes and a permit issued based upon the drawings we submitted. The toilet room was built per the State approved plans.
4. Masonry walls that were specified for this room have already been constructed and all plumbing has been roughed in.

RECEIVED

MAY 15 2008

BUREAU OF CONSTRUCTION CODES PLAN REVIEW DIVISION

Application Fee: \$300.00

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Division
P.O. Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

133


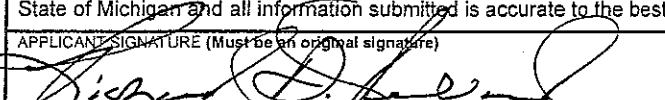
79 631

Authority: 1996 PA 1
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION				
FACILITY NAME		STREET / SITE ADDRESS		
Brandywine Junior/Senior High School		1700 Bell Road		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED		COUNTY		
<input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Township Of: Niles		Berrien		
Estimated Project Cost \$ 3,000,000.00		Estimated Cost of Compliance \$ 4,700.00		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number ^{B-} 26200		
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP	CONSTRUCTION TYPE
		N/A	E	II-B
Project Does Not Comply With Barrier Free Design Requirements As Follows:				
Michigan Building Code Section(s) 2003 MBC, SECTION 1109.2 - ACCESSIBLE Section 604.3 - "Clearance (around water closet)". TOILET AND BATHING FACILITIES Reason for Non-Compliance See Exhibits A, B, C, D, E and F attached				
NAME		ENFORCING AGENCY		TELEPHONE NUMBER (Include Area Code)
TODD CORDILL, NCARB		STATE OF MICHIGAN BUREAU OF CONSTRUCTION CODES		(517) 241-9328
ADDRESS		CITY	ZIP CODE	FAX NUMBER (Include Area Code)
P.O. Box 30254		LANSING	48912	(517) 241-9308
BUILDING OFFICIAL SIGNATURE (Must be an original signature)				
				
PROJECT ARCHITECT/ENGINEER (When professional services are required by code or law)				
NAME		MICHIGAN LICENSE NUMBER	FIRM NAME	
Richard D. Hebard, R.A.		34983	Hebard & Hebard Architects, Inc.	
ADDRESS		CITY	STATE	TELEPHONE NUMBER (Include Area Code)
107 North Eddy Street		South Bend	IN	(574) 234-8907
APPLICANT (Note: All correspondence will be sent to this address)				
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE		COMPANY NAME		SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)
Richard D. Hebard, R.A.		Hebard & Hebard Architects, Inc.		[REDACTED]
ADDRESS		CITY	STATE	TELEPHONE NUMBER (Include Area Code)
107 North Eddy Street		South Bend	IN	(574) 234-8907
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.				FAX NUMBER (Include Area Code)
				(574) 234-8908
APPLICANT SIGNATURE (Must be an original signature)			DATE	
			05-14-08	

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of **RECEIVED** Docket No. 2008-986
Get Back Up Inc. Agency No. 79933
12305 Dexter AUG 13 2008
Detroit, MI
Applicant BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION Agency: Bureau of Construction
Codes
_____/ Case Type: Barrier Free Design
Exception Request

Issued and entered
this 12th day of August, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on August 11, 2008, in Lansing Michigan. Present were Attorneys Paul Novak and Haran C. Rashes, representing the Applicant; Ed Ozeir, Consultant and Contractor, and Usha Menon representing the Plan Review Division.

At the conclusion of the hearing, the Applicant filed Proposed Findings of Fact and Conclusions of Law. For the most part I have adopted these proposals.

5. EXCEPTION APPLICATIONS
04. 79933

ISSUES

Should the Applicant be granted a five year time exception from Section 1104.4 of the 2003 Michigan Building Code (MBC)?

At the outset of the hearing, Ms. Menon stated that Section 1103.1 of the MBC may be deleted from consideration.

FINDINGS OF FACT

The Applicant has completed renovation of the interior of a building constructed in the 1920's and formerly used a middle school for the Detroit Public Schools. A building permit was issued in October 2007; work has been completed at a cost of \$400,000. This building is in the Russell Woods Historic District. The Applicant expects to open in another month with a temporary certificate of occupancy.

This building has three levels. The first floor has 16,000 square feet; the second and third 6000 square feet each. The second floor is 12 feet above the first and the third is 11 feet above the second. As a result of the renovation work, the first floor satisfies all barrier free design requirements.

The building is owned by Dr. William Taylor. The goal is to use the building as a "comprehensive Residential Substance Abuse Treatment Facility ..." (Page 2 of Applicant's Proposed Findings of Fact.) Ten to 15 staff members plus cooking staff will work in this building assisting up to 150 individuals needing substance abuse treatment. There will be 45 beds per floor with the kitchen, eating area, and group meeting areas on the first floor. There will also be rooms on each floor where residents may watch television and participate in group meetings. All wheel chair users who need substance abuse treatment and staff wheel chair users may receive treatment and work on the accessible

first floor. There is no requirement that either a resident or staff member go to the second or third floors. Duplicate facilities have been provided.

The Applicant estimates an exterior elevator will cost approximately \$300,000. Since this building is in a historic district, the Applicant must first file and receive approval to add an exterior elevator from the local Historic District Commission. As a part of this expenditure, the Applicant will have to make interior structural modifications to the second and third floor bathrooms to achieve compliance with the barrier free requirements. These changes would cause the loss of up to 16 beds for both floors.

The Applicant estimates it will cost approximately \$400,000 per year to operate this facility. Adding an interior elevator would cost more because more interior changes would be needed.

The Applicant requests a 5 year time exception to raise the money needed for adding an exterior elevator and providing second and third floor barrier free bathrooms. Applicant Exhibit B is a proposal to make the changes described above.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception

should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1104.4 of the MBC provides:

1104.4 Multilevel buildings and facilities. At least one accessible route shall connect each accessible level, including mezzanines, in multilevel buildings and facilities.

Compelling need based on cost, substantial structural modifications, and duplicate facilities has been presented to support the Applicant's exception request. A person with a disability can take part in all substance abuse treatment on the accessible first floor. A staff member who is unable to reach the second or third floors may engage in all support functions on the first floor as well.

Having spent \$400,000 to renovate the building including making the first floor completely barrier free and needing an estimated \$400,000 per year to operate the facility, the Applicant needs time to raise additional resources.

RECOMMENDED DECISION

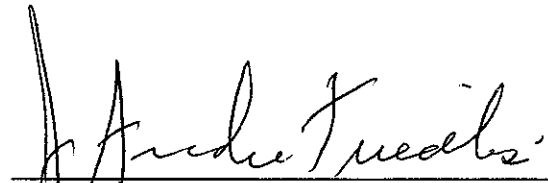
I recommend the Board grant the Applicant a five year time exception from Section 1104.4 of the MBC to provide an exterior elevator and barrier free bathroom facilities on the second and third floors.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the

building.

As a condition to granting this time exception, the owner shall submit, within 60 days from the Board's Final Order issued after review of this recommendation, a plan/proposal detailing how compliance will be achieved within the time exception period. This plan/proposal must show or state that it is technically and structurally feasible to meet the applicable Barrier Free Design Rules.

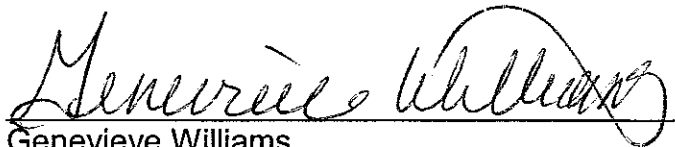
A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.



J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 12th day of August, 2008.



Genevieve Williams

State Office of Administrative Hearings and Rules

Daljit Benipal
City of Detroit Buildings and Safety Eng
2 Woodward Ave
Suite 411
Detroit, MI 48226

Haran Rashes
Clark Hill, PLC
212 East Grand River Ave
Lansing, MI 48906

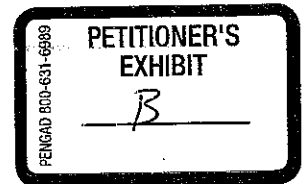
Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Paul Novak
Clark Hill PLC
212 E Grand River Ave
Lansing, MI 48906

William L Taylor
Get Back Up Inc
40421 Village Wood Rd
Novi, MI 48375



Date: 8/7/2008
Proposal Number: 1065
Project Location: Detroit, MI



Mustang Construction, Inc
44015 Settlers Creek
Novi, MI, 48375
(734) 266 - 9250

Proposal

Company	Get Back Up, Inc.	Street	12305 Dexter
Representative	Dr. William L. Taylor	City	Detroit
Phone	(734) 729 3690	Zip	48235
Cell		FAX	

This is a proposal to provide labor and material to perform the following items

- a. Supply complete set of prints to comply with The Barrier Free Design as contained in the Americans with Disabilities Act of 1990:
- b. Perform the required demolition and alteration of room 202 to add 1 Men and 1 Women Barrier Free restrooms
- c. Perform the required demolition and alteration of room 302 to add 1 Men and 1 Women Barrier Free restrooms
- d. Add an elevator on the exterior of the South wall of the building to service the second and third floor
- e. Add a backup generator
- f. Perform all the required demolition and reconstruction of the second and third floors to comply with the Barrier Free code.
- g. Widen the door openings (22 in total) and furnish new doors to comply with the code,
- h. Pull all required permits
- i. Provide all other necessary modifications to comply with the Barrier Free Code
- j. Provide on site supervision

Total budgetary cost for the above services will be \$300,000.

This budgetary quote is subject to change upon completing and obtaining approved architectural prints, Payment plan shall be agreed on prior to the project start date.

Mustang Construction

Customer Signature

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH

* * * * *

In the matter of	Docket No.	2008-986
Get Back Up, Inc.	Agency No.	7993
12305 Dexter	Agency:	Bureau of Construction Codes
Detroit, MI 48206		
Applicant	Case Type:	Barrier Free Design
_____ /		Exception Request

**GET BACK UP, INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSION OF
LAW.**

1 This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125 1351 *et seq*; 1972 PA 230, as amended, MCL 125 1501 *et seq* ; and 1969 PA 306, as amended, MCL 24 101 *et seq*.

2 The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on August 11, 2008, in Lansing, Michigan. Present for the Applicant were Attorneys Paul M Novak and Haran C. Rashes of Clark Hill PLC, and its consultant/contractor, Ed Ozeir

3 The hearing was held to address the Applicant's request to grant an exception from Sections 1103.1 and 1104.4 of the 2003 Michigan Building Code ("MBC")

4. Get Back Up, Inc. ("GBU"), will be a state-of-the-art, comprehensive Residential Substance Abuse Treatment Facility, that will offer an "on-site" continuum of care. GBU will be located in a 28,626 square foot former Detroit Public School ("DPS") building. When completed, GBU will be a residential substance abuse treatment facility. The program offered will provide a multitude of resources, to its residents, in tandem with their treatment, all under one roof.

5. GBU is a registered 501(c)(3) nonprofit social service corporation, whose primary purpose is to respond to many of the challenges facing today's young adults, students and student-athletes. GBU's programs draw upon the personal achievements and life experiences of its President Dr. William L. ("Billy") Taylor, Ed. D. The GBU Residential Substance Abuse Treatment Facility will provide a multitude of resources, to its residents, in tandem with their treatment, all under one roof.

6. GBU currently has a projected \$400,000.00 operating budget to cover the staff and programming costs of running its facility and offering its substance abuse treatment and residential program services.

7. Preparing the Building for the GBU program is already taking substantial effort and expense. GBU is renovating a former DPS building to accommodate its residential treatment center. The building consists of 28,626 square feet of space, spread over three distinct areas. The South and Middle wings of the building are one story high, and not the subject of this Barrier Free Design Exception Request. The North wing is three stories in height, with 6,476 square feet on the first story and 6,025 square feet on each of the second and third stories. A more detailed depiction of the Building is attached as Exhibit A. The proposed use of the North

wing is as an inpatient facility, with the same inpatient services available on each of the three floors

8 Get Back Up is already bearing construction costs related to the renovation of the facility of over \$400,000 and has significantly constrained resources for purposes of making the modifications necessary to the remainder of the Building

9 The first floor of the North wing is fully accessible, and the building currently does not have elevator access to the second and third floors. There are no services on the second and third floors of the North Wing that will not be offered on the first floor

10 The estimated cost of installing an elevator in the facility and making additional structural modifications to render restrooms on the second and third floors of the North Wing accessible is estimated to be \$300,000. An estimate from a local construction firm supporting this cost is attached as Exhibit B

11 In addition, the floor space necessary to install an elevator and make structural modifications to the restrooms would reduce the inpatient capacity by as many as 16 beds.

PROPOSED CONCLUSIONS OF LAW

1 Act 1 of the Public Acts of 1906, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

2. An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

3. Section 1103.1 of the MBC provides:

Where required. Sites, buildings, structures, facilities, elements and spaces, temporary or permanent shall be accessible to persons with physical disabilities.

Section 1104.4 of the MBC provides:

Multilevel buildings and facilities. At least one accessible route shall connect each accessible level, including mezzanines, in multilevel buildings and facilities (Exceptions omitted.)

4. GBU has demonstrated compelling need to support its request based on the cost of compliance, structural difficulties, and duplicate facilities. The renovation costs to comply with the above referenced building code provisions are estimated to be \$300,000.00. With an annual operational programming budget of only \$400,000.00, GBU does not have sufficient resources to pay for, or finance the costs of this additional renovation. Requiring the Facility to comply with these code provisions will jeopardize the ability of the nonprofit to provide its anticipated treatment services.

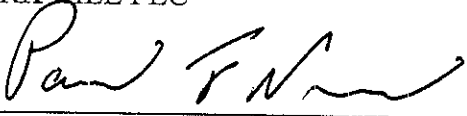
5. Additionally, the same inpatient and residential services will be available on each of the three floors of the North Wing. Consequently, a patient with disabilities can be fully accommodated on the first floor of the North Wing and will not be deprived of any of the services provided at the facility.

6 Substantial space and function would be lost by adding an elevator at the facility. It is estimated that up to 16 beds would be lost if the second and third floors of the facility were renovated to comply with code provisions governing accessibility.

For the foregoing reasons, the Applicant Get Back Up, Inc. respectfully submits that its barrier free design waiver application should be granted

Respectfully submitted,

CLARK HILL PLC

By: 

Paul F. Novak (P39524)
Haran C. Rashes (P54883)
212 East Grand River Ave
Lansing, MI 48906
(517) 318-3100

ATTORNEYS FOR APPLICANT
GET BACK UP, INC.

Dated: August 11, 2008

CLARK HILL
PLC
ATTORNEYS AT LAW

212 East Grand River Avenue
Lansing, Michigan 48906
Tel (517) 318-3100 ■ Fax (517) 318-3099
www.clarkhill.com

Paul F. Novak
Phone: (517) 318-3034
E-Mail: pnovak@clarkhill.com

RECEIVED

JUN 16 2008

June 12, 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Plan Review Division
Bureau of Construction Codes
Michigan Department of Labor & Economic Growth
P. O. Box 30255
Lansing, MI 48909

Re: Application for Barrier Free Design Rule Exception Application No. 79933-Wayne-
Get Back Up Inc.

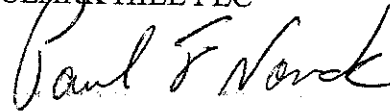
To Whom It May Concern:

Our firm has been retained to assist with the above-referenced application. In that regard, I am submitting this correspondence to request that any future correspondence from the Michigan Department of Labor & Economic Growth regarding the Barrier Free Design Rule Exception Application No. 79933-Wayne-Get Back Up Inc. be sent to my attention.

Should you have any questions, please feel free to contact me.

Very truly yours,

CLARK HILL PLC



Paul F. Novak
Senior Counsel

PFN:met

cc: Dr Billy Taylor

RECEIVED

MAY 28 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes & Fire Safety
Plan Review Division
P O. Box 30255
Lansing, MI 48909
517-241-9328
www.michigan.gov/bccfs

133

Agency Use Only

79933

Application Fee: \$300.00

Authority: 1996 PA 1	The Department of Labor & Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.
Completion: Mandatory	
Penalty: Exception will not be granted	

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION					
FACILITY NAME GET BACK UP, INC			STREET / SITE ADDRESS 12305 DEXTER		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH THE FACILITY IS LOCATED <input checked="" type="checkbox"/> CITY <input type="checkbox"/> VILLAGE <input type="checkbox"/> TOWNSHIP OF: DETROIT			COUNTY WAYNE		
ESTIMATED PROJECT COST \$ 400,000			ESTIMATED COST OF COMPLIANCE \$ 475,000		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project.)					
<input type="checkbox"/> NEW BUILDING <input type="checkbox"/> ALTERATION <input checked="" type="checkbox"/> CHANGE OF USE			BUILDING PERMIT/FILE NUMBER PRV2007-01120		
IS A TEMPORARY EXCEPTION REQUESTED? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			PERIOD OF TIME REQUESTED? 3 YEARS	USE GROUP B/I-1	CONSTRUCTION TYPE III B
PROJECT DOES NOT COMPLY WITH BARRIER FREE DESIGN REQUIREMENTS AS FOLLOWS:					
MICHIGAN BUILDING CODE SECTION(S): MBC 2003 Section 1103.1					
REASON FOR NON-COMPLIANCE FIRST FLOOR IS FULLY ACCESSIBLE. APPLICANT REQUESTING WAIVER FOR SECOND AND THIRD FLOOR ELEVATOR ACCESS AS ALL THREE FLOORS PROVIDE SAME SERVICE.					
NAME Daljit Singh Benipal		ENFORCING AGENCY City of Detroit		TELEPHONE NUMBER (Include Area Code) 313 224 0297	
ADDRESS 2 WOODWARD AVENUE, SUITE		CITY DETROIT	ZIP CODE 48226	FAX NUMBER (Include Area Code) 313 224 1634	
BUILDING OFFICIAL SIGNATURE (Must be an original signature) DB Benipal					
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)					
NAME ADNAN AL SAATI		MICHIGAN LICENSE NUMBER 38125	FIRM NAME A & M CONSULTANT		
ADDRESS 13746 MICHIGAN AVE.		CITY DEARBORN	STATE MI	ZIP CODE 48126	TELEPHONE NUMBER (Include Area Code) (313) 582-0022
APPLICANT (Note: All correspondence will be sent to this address)					
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE WILLIAM L. TAYLOR		COMPANY NAME GET BACK UP, INC		SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED) [REDACTED]	
ADDRESS 40421 VILLAGE WOODS		CITY NOVI	STATE MI	ZIP CODE 48375	TELEPHONE NUMBER (Include Area Code) (248) 697-9462
I certify that the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.					FAX NUMBER (Include Area Code) (248) 697-9462
APPLICANT SIGNATURE (Must be an original signature) Dr. William L. Taylor, Jr.			DATE 5/17/08		

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2008-988

Saugatuck High School
401 Elizabeth School
Saugatuck, MI

Agency No. 80343

Applicant

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

RECEIVED

AUG 13 2008

Issued and entered
this 12th day of August, 2008
by J. Andre Friedlis
Administrative Law Judge

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on August 11, 2008, in Lansing, Michigan. Present were David Wilkins, GMB Architects, Attorney Robert Dietzel, and Tim Wood, Superintendent of Schools, representing the Applicant, and Usha Menon representing the Plan Review Division.

ISSUE

Should a barrier free exception be granted from Section 1104.3.2 of the 2003

5. EXCEPTION APPLICATIONS
05. 80343

Michigan Building Code (MBC)?

FINDINGS OF FACT

The Applicant would like to construct a two level press box on top of newly constructed bleachers. The new press box will be 28 feet 8 inches above grade. Each level will have 500 square feet; the second level is 10 feet above the first. Construction began in early 2008. The goal is to complete the project in time for a game scheduled for September 26, 2008.

A bond proposal to construct a new stadium as well as other district improvements was approved in November 2007. It is expected that the new stadium will cost \$3,045,000. The press box will cost \$110,000 of this amount.

The prior press box had 700 square feet on two levels on top of a grade level storage facility. This press box had to be removed due to the reconfiguration of the track. This change would have placed the old press box in the middle of the new track and unusable.

The new stadium will have barrier free parking, ramping to the ticket counter, concessions, seating, and bathrooms. In addition barrier free seating and bathrooms will be constructed. The new press box will be above the bathrooms and concession area.

The first level of the press box will be used by home and visiting coaches, video facilities, timing, and scoring functions. Up to 10 people will be on this level during games. The second level, reached via an interior stairway, will be used for taping, scouts, and media representatives. Up to 10 people will use this level during games. Only those people performing these functions will be allowed in the press box. The public will not have access to the press box.

The Applicant estimated that the press box will be used for 9 home football games, 8 soccer games, and 7 to 10 track meets.

The Applicant estimated it would cost \$150,000 to construct an elevator to provide access to both levels of the press box. This elevator would have to be placed through the bathrooms and those facilities would need to be moved. A ramp was estimated to be 400 feet with landings. No estimate was provided for a ramp because this cost was believed to be more than required for an elevator.

Superintendent Wood pointed out that the no funds are left for adding an elevator expected to cost \$150,000. As it is the District will have to use \$217,000 of contingency funds to cover cost overruns.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when compelling need is demonstrated by the Applicant. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules which have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or

administratively feasible.

Section 1104.3.2 of the MBC provides:

1104.3.2 Press boxes. Press boxes in assembly areas shall be on an accessible route. Exceptions omitted.

The Applicant has provided compelling need based on cost and limited use to approve the request for exception. It would be too costly to require expenditure of \$150,000 for an elevator to access a building expected to be used 27 times per year by up to 20 people. The Applicant will provide barrier free seating in the bleachers and barrier free access to the concession stand and bathrooms.

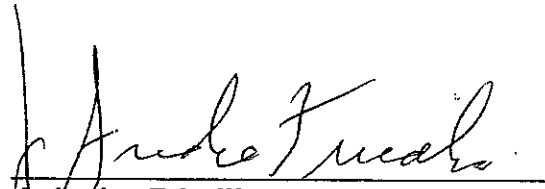
As pointed out by the Applicant, a very similar request from the East Lansing High School, Docket 2007-1132, was approved by the Board.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 1104.3.2 of the MBC.

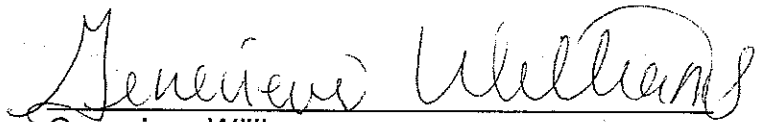
As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 12th day of August, 2008.



Genevieve Williams

State Office of Administrative Hearings and Rules

David Wilkins
GMB Architects Engineers
Saugatuck High School
85 E. Eight Street
Suite 200
Holland, MI 49423

Irvin Poke
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of:

Docket No. 2008-988

Saugatuck High School
401 Elizabeth
Saugatuck, Michigan

Agency No. 80343

Agency: Bureau of Construction Codes

Applicant

Case Type: Barrier Free Design
Exception Request

Patrick J. Berardo (P10707)
Robert A. Dietzel (P67567)
Thrun Law Firm, P.C.
Attorneys for Applicant
2900 West Road, Ste. 400
P.O. Box 2575
East Lansing, Michigan 48826-2575
(517) 484-8000

APPEARANCE

TO: State Office of Administrative Hearings and Rules

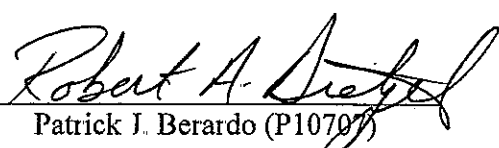
PLEASE ENTER our Appearance as counsel on behalf of Applicant Saugatuck Public Schools in the above-entitled cause.

Respectfully submitted,

THRUN LAW FIRM, P.C.
Attorneys for Respondent

Dated: August 11, 2008

By: _____


Patrick J. Berardo (P10707)
Robert A. Dietzel (P67567)

PROOF OF SERVICE

The undersigned certifies that on August 11, 2008, the foregoing instrument was served upon the State Office of Administrative Hearings & Rules and the Bureau of Construction Codes via hand delivery

Jill M. Walker

RECEIVED

JUN 09 2008

Application for Barrier Free Design Rule Exception

133

Michigan Department of Labor & Economic Growth

Bureau of Construction Codes / Plan Review Division

P.O. Box 30255, Lansing, MI 48909

517-241-9328

www.michigan.gov/bcc

80343

Shelf No.

BUREAU OF CONSTRUCTION CODES

PLAN REVIEW DIVISION

Application Fee: \$300.00

Authority: 1966 PA 1
 Completion: Mandatory
 Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION				
FACILITY NAME		STREET / SITE ADDRESS		
M.S. / H.S. Athletic Stadium		401 Elizabeth Street		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED		COUNTY		
<input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: Saugatuck		Allegan		
Estimated Project Cost \$ 3,045,000.00		Estimated Cost of Compliance \$ 150,000.00		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input checked="" type="checkbox"/> New Building <input type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number _____		
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP	CONSTRUCTION TYPE
			A5	VB
Project Does Not Comply With Barrier Free Design Requirements As Follows:				
Michigan Building Code Section(s) 1104.3.2 - ACCESSIBLE ROUTE TO PRESS-BOX				
Reason for Non-Compliance AGGREGATE AREA EXCEEDS 500 SQUARE FEET.				
NAME		ENFORCING AGENCY	TELEPHONE NUMBER (Include Area Code)	
TODD CORDILL, NCARB		STATE OF MICHIGAN, BUREAU OF CONSTRUCTION CODES	(517) 241-9328	
ADDRESS		CITY	ZIP CODE	FAX NUMBER (Include Area Code)
P.O. BOX 30254		LANSING	48909	(517) 241-9308
BUILDING OFFICIAL SIGNATURE (Must be an original signature)				
<i>[Signature]</i>				
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
NAME		MICHIGAN LICENSE NUMBER	FIRM NAME	
Harm Perdock		29065	GMB Architects-Engineers	
ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE NUMBER (Include Area Code)
85 East Eighth Street	Holland	MI	49423	(616) 796-0200
APPLICANT (Note: All correspondence will be sent to this address)				
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE		COMPANY NAME	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED)	
David Wilkins		GMB Architects-Engineers	[REDACTED]	
ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE NUMBER (Include Area Code)
85 East Eighth Street	Holland	MI	49423	(616) 796-0200
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge				FAX NUMBER (Include Area Code)
				(616) 796-0201
APPLICANT SIGNATURE (Must be an original signature)			DATE	
<i>[Signature]</i>			6-6-08	